IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.: 308 of 1995 with
Cross-Objections No. 180/1997.

Decided on: 16.05.2007.

Dalip Chand and Others.	**…**	**…**	**…**	**Appellants.**
Versus				
Dalumbi Devi & Others.	**…**	**…**	**…**	**Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1]

For the Appellants:	**Mr. K.D. Sood, Advocate.**
For Respondents No.1 to 9, 11 and 12:	**Mr. G.D. Verma, Sr. Advocate with B.C. Verma, Advocate.**
For Respondent No.10:	**Mr. B.N. Gupta, Advocate.**

Rajiv Sharma, Judge:

This judgment will dispose of the Regular Second Appeal No.308 of 1995 and the Cross-Objections No.180 of 1997 since they arise out of the same judgment and decree.

A challenge has been laid by way of the second appeal to the judgment and decree passed by the District Judge, Hamirpur, dated 8.8.1995 in civil appeal No.17 of 1989.

The brief facts necessary for the adjudication of the second appeal are that the appellants (hereinafter referred to as the plaintiffs) had filed a suit for declaration, permanent prohibitory injunction and in

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[1] Whether reporters of local papers may be allowed to see the judgment?

the alternative for possession against the respondents (hereinafter referred to as the defendants).

The trial court on the basis of the pleadings of the parties had framed the following issues:-

1. Whether Smt. Jasodhan Devi executed a valid will on 18-11-81, as alleged? ------O.P.P.

2. Whether the plaintiffs are entitled for the relief of permanent injunction? -----O.P.P.

3. Whether Smt. Jasodhan Devi executed a valid will and last will on 19-11-81 in favour of predecessors in title of defendants, as alleged? ----O.P.D.

4. If issue No.1 is proved, whether the said will is forged and executed after the death of testator, as alleged? ----O.P.D.

5. Relief.

The trial court had given the following findings on the issues framed:-

Issue No.1. No.

Issue No.2. No.

Issue No.3. No.

Issue No.4. Yes.

Relief: The suit dismissed.

The trial court on the basis of the evidence led by the parties had dismissed the suit on 27.12.1988. The plaintiffs feeling aggrieved by the judgment and decree dated 27.12.1988 had preferred an appeal before the District Judge, Hamirpur. The District Judge, Hamirpur had framed the following points for consideration:-

1. Whether the impugned judgment and decree are legally and factually sustainable?

2. Relief.

The District Judge had answered the points framed in the following manner:-

Point No.1: Yes.

Relief: Appeal dismissed as per operative portion of the judgment.

The District Judge had dismissed the appeal on 8.8.1995.

The second appeal was admitted on substantial questions No.1 and 2 formulated at page 5 of the paper book. Since both the questions are inter-connected, they will be dealt with together.

Mr. Kapil Dev Sood had vehemently argued that the Will executed by Smt. Jasodhan Devi, i.e. Ext.P-1 was valid. He had further contended that there was no suspicious circumstance existing with regard to the execution of the Will since the plaintiffs had been looking after Smt. Jasodhan Devi. Mr. G.D. Verma had supported the judgment and decree passed by both the courts below.

I have heard the learned counsel for the parties and perused the record.

The plaintiffs had examined 9 witnesses and tendered the documents Exts.P-1 to P-10. PW-2 is the scribe of the Will dated 18.11.1981 and PWs.3 and 4 S/Shri Baldev Raj and Hari Chand are the attesting witnesses of the Will. PW-2, Albel Singh who had scribed the Will had stated that he reached the house of Smt. Jasodhan Devi at about 2 or 2.30 p.m. and at that time Shri Baldev Raj and Shri Hari Chand, attesting witnesses were present there. PW-3 and PW-4, i.e. Shri Baldev Raj and Shri Hari Chand had testified that they reached the village Badni after 5 p.m. PW-2 had stated that the Will was executed at about 2 or 2.30 p.m., whereas, PW-3 Shri Baldev Raj has stated that it was executed after 5 p.m. and PW-4 had also testified that it was executed at 5.30 p.m. In the Will, i.e. Ext.P-1, the name of Shri Hari Ram, Pradhan was written as one of the attesting witnesses and his name was subsequently deleted from the attesting witnesses. PWs-2, 3 and 4 had stated that though Hari Ram was called, but he

refused to come. Shri Hari Ram has been examined as DW-7 by the defendants. He had categorically stated that the father of the plaintiffs Shri Amar Chand had brought the Will Ext.P-1 to him on 22.11.1981 and requested him to put his signatures as attesting witness, but he refused to put his signatures since Smt. Jasodhan Devi had died on 20.11.1981. The testimony of Shri Hari Ram was further corroborated by Shri Gopi Ram (DW-8) and Shri Amar Nath (DW-6). It is thus evident from the statements of DWs-6, 7 and 8 that the father of the plaintiffs had approached Shri Hari Ram to put his signatures on 22.11.1981 after the death of Smt. Jasodhan Devi who died on 20.11.1981. Besides this, the plaintiffs' father Shri Amar Chand had played a very active role in preparing the Will Ext. P-1. The Will is required to be proved beyond reasonable doubt. There are major contradictions in the statements made by the scribe and two attesting witnesses with regard to the time of the execution of the Will. The manner in which the signatures of Shri Hari Ram, Pradhan were tried to be procured after the death of Jasodhan Devi also casts suspicion on the execution of the Will.

Accordingly, it is held that the Will Ext.P-1 was not a valid Will and the judgment and decrees passed by the courts below are up-held. There is no other substantial question of law involved in this appeal and consequently this regular second appeal is dismissed.

Cross-Objections No.180 of 1997:

Mr. G.D. Verma contended that the Will Ext.D-1, dated 19.11.1981 is valid and the finding recorded by the trial court to the contrary is liable to be set aside. Smt. Jasodhan Devi had died on 20.11.1981. The Will Ext.D-1 was executed on 19.11.1981 in favour of the predecessor-in-interest of the defendants, i.e. Shri Brij Lal and Shri Anant Ram. The Will was scribed by Shri Marchu Ram (DW-2). He

had testified that the Will Ext.D-1 was drafted by him at the instance of Hari Ram, Pradhan and Brij Lal after the death of Jasodhan Devi. It is thus evident that the Will in question, i.e. Ext.D-1 was prepared after the death of Smt. Jasodhan Devi. Shri Parkash Chand son of Shri Anant Ram had taken active part in execution of the Will Ext.D-1. It is evident that the Will dated 19.11.1981 is not a valid Will.

Accordingly, the cross-objections are also dismissed.

There shall be no order as to costs.

May 16, 2007 **(Rajiv Sharma)**
(sck). **Judge**